

IN THE MISSOURI SUPREME COURT

No. SC83350

IN RE: THE ESTATE OF RAYMOND KLAUBER

Appeal from the Circuit Court of St. Louis County, Probate Division
The Honorable Mark Siegel, Judge

SUBSTITUTE BRIEF OF APPELLANT
CLAYTON HOUSE HEALTH CARE

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JURISDICTIONAL STATEMENT

On February 14, 2000, the Probate Division of the St. Louis County Circuit Court, the Honorable Mark Siegel, entered an order and judgment dismissing the claim of Clayton House Health Care (“Clayton House”) against the Estate of Raymond Wall Klauber (“the Estate”). Clayton House timely appealed to the Missouri Court of Appeals, Eastern District.

On November 14, 2000, the Court of Appeals reversed the judgment of the probate court and ordered the case remanded. On March 20, 2001, this Court granted the Estate’s timely-filed application for transfer.

STATEMENT OF FACTS

On August 6, 1999, appellant Clayton House Health Care (“Clayton House”), through its Administrator, filed its claim for \$25,799.53 in the Estate of Raymond Klauber (“the Estate”). L.F. 7. Attached to the claim was an itemized statement supporting Clayton House’s request for that amount. L.F. 9. Clayton House’s claim was set for hearing on October 18, 1999. L.F. 3.

On October 18, 1999, the Circuit Court of St. Louis County, Probate Division, entered its Order Dismissing Claim of Clayton House Health Care for failure to prosecute its claim. L.F. 10; App. 1. The court did not designate in its order whether its dismissal of Clayton House’s claim was with or without prejudice. L.F. 10; App. 1. Instead, the court’s order provided as follows:

The Court calls for hearing the Claim of Clayton House Health Care, at which time the Conservator, Thomas S. Arras, appears by Chief Deputy and Attorney, Edward L. Thomeczek, and Claimant appears not.

The Conservator by his attorney orally moves for dismissal of the Claim for failure to prosecute, and the Court hereby SUSTAINS the motion.

WHEREUPON, the Court hereby DISMISSES the Claim of Clayton House Health Care for failure to prosecute.

L.F. 10; App. 1.

On December 21, Clayton House refiled its claim for \$25,799.53, and again supported that claim with an itemized statement. L.F. 11, 12. Clayton House's claim was refiled through its attorney. L.F. 11, 12. The claim was set for hearing on January 11, 2000. L.F. 4.

In response to Clayton House's refiled claim, the Estate filed a motion to dismiss the claim. L.F. 13. The sole argument raised in the Estate's motion was that the refiled claim was barred by operation of Section 510.150 RSMo (1994). L.F. 13. Under Section 510.150, "any involuntary dismissal other than one for lack of jurisdiction or for improper venue shall be with prejudice unless the court in its order for dismissal shall otherwise specify." § 510.150 RSMo (1994).

The probate court heard the Estate's motion to dismiss on January 11, 2000. After hearing, the court granted the parties thirty days within which to brief the issue of whether Clayton House's claim could be heard. L.F. 28.

The parties filed their memoranda on February 14, 2000. L.F. 16, 29. In its memorandum, Clayton House argued that its claim could be heard because the Missouri Rules of Civil Procedure, which supersede all inconsistent statutes, deem an involuntary dismissal to be without prejudice unless the court specifies otherwise in its order of dismissal. L.F. 18. The Estate again argued in its

memorandum that the refiled claim was barred because the original claim was deemed dismissed with prejudice pursuant to § 510.150. L.F. 29-30. On February 14, 2000, the probate court sustained the Estate's motion to dismiss Clayton House's claim. L.F. 31; App. 2.

Clayton House appealed to the Missouri Court of Appeals, Eastern District. The Court of Appeals concluded that the Rules of Civil Procedure prohibited the probate court from applying Section 510.150 to the extent that the statute was inconsistent with Rule 67.03. *In re The Estate of Raymond Klauber*, No. ED 77524, slip op. at 3 (Mo. App. E.D. Nov. 14, 2000). The court therefore reversed the probate court's judgment that Clayton House's original claim was deemed dismissed with prejudice. This Court subsequently granted the Estate's timely application for transfer.

POINT RELIED ON

**THE CIRCUIT COURT, PROBATE DIVISION, ERRED IN
ENTERING ITS JUDGMENT AND ORDER SUSTAINING
RESPONDENT’S MOTION TO DISMISS THE CLAIM OF APPELLANT
CLAYTON HOUSE, BECAUSE THE CLAIM WAS NOT BARRED BY
OPERATION OF THE COURT’S DISMISSAL OF CLAYTON HOUSE’S
PRIOR CLAIM AND § 510.150 RSMo, IN THAT THE PRIOR DISMISSAL
WAS WITHOUT PREJUDICE PURSUANT TO THE MISSOURI RULES
OF CIVIL PROCEDURE.**

In re Estate of Johnson, 912 S.W.2d 560 (Mo. App. E.D. 1995)

Property Exchange & Sales, Inc. v. King, 822 S.W.2d 572 (Mo. App. E.D. 1992)

Kanefield v. SP Distributing Co., L.L.C., 25 S.W.3d 492 (Mo. App. 2000)

Rule 41.01

Rule 41.02

Rule 41.04

Rule 67.01

Rule 67.03

§ 510.150 RSMo (1994)

ARGUMENT

THE CIRCUIT COURT, PROBATE DIVISION, ERRED IN ENTERING ITS JUDGMENT AND ORDER SUSTAINING RESPONDENT'S MOTION TO DISMISS THE CLAIM OF APPELLANT CLAYTON HOUSE, BECAUSE THE CLAIM WAS NOT BARRED BY OPERATION OF THE COURT'S DISMISSAL OF CLAYTON HOUSE'S PRIOR CLAIM AND § 510.150 RSMo, IN THAT THE PRIOR DISMISSAL WAS WITHOUT PREJUDICE PURSUANT TO THE MISSOURI RULES OF CIVIL PROCEDURE.

1. Standard of Review

Appellate review of a grant of a motion to dismiss is essentially de novo. *Kanefield v. SP Distributing Co., L.L.C.*, 25 S.W.3d 492, 495 (Mo. App. 2000). The reviewing court treats all facts alleged as true and construes allegations liberally and favorably to the plaintiff. *Id.* When the trial court fails to specify its reasons for dismissing the petition, this Court presumes the trial court acted based on one or more of the reasons stated in the motion to dismiss. *Id.*

2. Under the Missouri Rules of Civil Procedure, the dismissal of Clayton House's prior claim was without prejudice.

The probate court erred in dismissing Clayton House's refiled claim. The Missouri Rules of Civil Procedure, which supersede all conflicting statutes, provide that an involuntary dismissal shall be without prejudice unless the court specifies otherwise in its order. Rules 41.02, 67.03. The Rules therefore supersede Section 510.150, the only basis for the probate court's dismissal of Clayton House's refiled claim.

Section 510.150 provides as follows:

A dismissal without prejudice permits the party to bring another action for the same cause, unless the action is otherwise barred. A dismissal with prejudice operates as an adjudication upon the merits. Any voluntary dismissal other than one which the party is entitled to take without prejudice, and any involuntary dismissal other than one for lack of jurisdiction or for improper venue shall be with prejudice unless the court in its order for dismissal shall otherwise specify.

§ 510.150 RSMo (1994). Contrary to Section 510.150, Rule 67.03 of the Missouri Rules of Civil Procedure provides that "any involuntary dismissal shall be *without prejudice* unless the court in its order for dismissal shall otherwise specify." Rule

67.03 (emphasis added). Section 510.150 is therefore inconsistent with Rule 67.03.

The Rules of Civil Procedure expressly “supersede all statutes and existing court rules inconsistent therewith.” Rule 41.02. Therefore, if Rule 67.03 is applicable to this proceeding, the probate court’s dismissal of Clayton House’s August 6 claim must be deemed to have been without prejudice. *Property Exchange & Sales, Inc. v. King*, 822 S.W.2d 572, 574 (Mo. App. E.D. 1992) (rejecting defendants’ argument that the prior dismissal of plaintiff’s claim was with prejudice pursuant to § 510.150, because “to the extent that it is inconsistent, [Section 510.150] is superseded by Rule 67.03.”)

Rule 67.03 was applicable to this proceeding. The Rules of Civil Procedure provide that Rules 41, 54.18, 55.03, and 56 through 62 apply to proceedings in the probate division of the circuit court. Rule 41.01(b). Although Rule 41.01(b) does not expressly designate the applicability of Rule 67 to probate proceedings, Rule 41.04, which is expressly applicable, requires that where “no procedure is specially provided by rule, the court having jurisdiction shall proceed in a manner consistent with the applicable statute . . . if any, and precedent *but not inconsistent with Rules 41 to 101, inclusive.*” Rule 41.04 (emphasis added). The plain wording of the Rule dictates that if Section 510.150 is applicable to this proceeding, it cannot be applied to the extent that it conflicts with Rule 67.03. The Rule, not the statute,

governs the effect of the court's order. *See In re Estate of Johnson*, 912 S.W.2d 560, 561 n.4 (Mo. App. E.D. 1995) (where the probate court's order dismissing plaintiff's "Objection to Final Settlement" did not declare whether the dismissal was with or without prejudice, the dismissal was deemed to be without prejudice pursuant to Rule 67.03). The settled law that rules supersede inconsistent statutes was, in fact, the basis of the Court of Appeals' opinion that the probate court erred in applying Section 510.150:

Rule 41.04, one of the rules listed in Rule 41.01(b) as applicable to probate proceedings, is instructive on the conflict between Rule 67.03 and section 510.150. . . . This rule mandates that courts apply the applicable statutes, but not to the extent they are inconsistent with Rules 41 to 101 inclusive. To the extent section 510.150 conflicts with Rule 67.03, the statute cannot be applied to this proceeding. We, therefore, apply Rule 67.03 to determine whether the court's dismissal is with or without prejudice.

In re The Estate of Raymond Klauber, No. ED 77524, slip op. at 3 (Mo. App. E.D. Nov. 14, 2000).

Under the applicable rules, the probate court's dismissal of Clayton House's first claim was without prejudice. A dismissal without prejudice permits a party to bring another claim for the same cause. Rule 67.01. Clayton House was entitled to refile its claim in December and have it heard on the merits by the probate court.

The probate court therefore erred when it dismissed Clayton House's claim based on Section 510.150. The court's order and judgment of February 14, 2000, dismissing Clayton House's claim should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the probate court's February 14, 2000, order and judgment dismissing Clayton House's claim against the Estate. The claim should be remanded to the probate court for hearing on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Two copies of the Brief of Appellant and a disk containing this brief were sent via first class mail on April 19, 2001, to the following:

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CERTIFICATE OF COMPLIANCE WITH SPECIAL RULE NO. 1

The undersigned certifies that the foregoing Substitute Brief of Appellant Clayton House Health Care includes the information required by Rule 55.03, and complies with the requirements contained in Special Rule No. 1(b). Relying on the word count of the Microsoft Word program, the undersigned certifies that the number of words contained in the Substitute Brief, excluding the cover page, certificate of service, signature block, appendix and certificate required by Special Rule No. 1(c) is 1,808.

APPENDIX